PUBLIC PROSECUTOR

v.

JAFAD @ JAVAD BIN ABDUL KARIM

HIGH COURT SABAH & SARAWAK, KOTA KINABALU
TUAN TEE AH SING JC.
[CRIMINAL TRIAL NO.9 OF 1991]
24 OCTOBER 1994

DANGEROUS DRUGS: *Charge of possession of cannabis - Dangerous Drugs Act 1952, s. 6 - Accused pleaded guilty and convicted - Sentence to be imposed - Factors to be taken into account - Consideration of mitigating factors - Element of public interest.*

The accused was originally charged with trafficking in 3, 557 grammes of cannabis, contrary to the provisions of the Dangerous Drugs Act 1952. The charge was subsequently amended to one of possession under s. 6 of the same Act and the accused pleaded guilty to the amended charge.

The Court was called upon to consider the appropriate sentence to be imposed upon the accused and in doing so took into consideration the following mitigating factors:

(a) the accused is a first offender;

(b) the pressure of the charge hanging over the accused's head has resulted in him having to take tranquilizers;

(c) by pleading guilty the accused has saved the Court's time and inconvenience to witnesses.

Held:

[1] Public interest requires that a sentence of imprisonment sufficient to deter not only the accused but other persons of a like mind shall be imposed in cases of this kind.

[2] In view of the fact that the offence committed by the accused is a serious crime punishable with imprisonment for life or for a term which shall not be less than five years, and with whipping of not less than ten strokes, and considering that the amount of cannabis seized was a very large quantity, the accused should be sentenced to 15 years imprisonment with effect from the date of his arrest plus 10 strokes of the rotan.

[Accused convicted and sentenced accordingly]

Case referred to:
Sau Soo Kim [1975] 2 MLJ 134 ***(refd)***

Legislation referred to:
Dangerous Drugs Act 1952, ss. 39A(2)(f), 6, 39B(1)(c), 39B(2)

For the prosectuion - Mohd. Yazid bin Mustafa, SFC
For the accused - Hadrian Sinsua

JUDGMENT

Tee Ah Sing JC:
The accused was originally charged on 21 June 1990 as follows:

> That you on 7 June 1990 at about 12.00 noon in front of shop Ban Tong. Kg. Air Kota Kinabalu, in the District of Kota Kinabalu, in the state of Sabah did on your behalf or on behalf of any person, traffic in a dangerous drugs, to wit 3,557.00 grammes of cannabis, and that you have thereby committed an offence, under s. 39B(1) (c) of the Dangerous Drug Act 1952 Act 234 and punishable under s. 39B(2) of the same Act.

However today the prosecution has amended the said charge to one of possession under s. 6 of the Dangerous Drugs Act 1952 and punishable under s. 39A(2)(f) of the said Act.

The accused has pleaded guilty to the amended charge. He also understood the nature and consequence of his plea of guilty. From the facts given and the chemist report (Exhibit P4) I am satisfied that the said offence has been committed.

I thus found the accused guilty and convicted him.

In imposing sentence I took into consideration the following mitigating factors:

a) the accused is a first offender

b) the charge is hanging over his head - originally the charge carried the death penalty. And as a result of this pressure he has to take tranquilizers.

c) the accused has willingly pleaded guilty.

By pleading guilty the accused has saved the Court time and inconvenience to witnesses.

In *Sau Soo Kim* [1975] 2 MLJ 134 a Federal Court decision where his Lordship Lee Hun Hoe Chief Justice (Borneo) at page 137 said:

> Whether a person is a hardened criminal or not I feel that a plea of guilty should be treated as a mitigating factor. It not only saves the country a great expense of a lengthy trial but also saves time and inconvenience of many particularly the witnesses.

However, in my view the offence committed by the accused is a serious crime punishable as follows:

> shall be punished with imprisonment for life or for a term which shall not be less than five years, and he shall also be punished with whipping of not less than ten strokes.

In this case I have taken into consideration the element of public interest.

Public interest requires that a sentence of imprisonment sufficient to deter not only the accused but other persons of a like mind shall be imposed in cases of this kind.

Further the amount of cannabis is 3,557 grammes which is a very large quantity.

Thus I sentence the accused to 15 years imprisonment with effect from the date of his arrest plus 10 strokes of the rotan.